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09/145,690	09/02/98	LONG JR.	C 97-106CIP

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EXAMINER

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ART UNIT	PAPER NUMBER
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3727

DATE MAILED:

03/28/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/145,690

Applicant(s)  
Long, Jr.

Examiner  
Robin A. Hylton

Group Art Unit  
3727



☒ Responsive to communication(s) filed on Feb 8, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-25 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-25 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3727

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it exceeds the generally excepted length of 250 words maximum. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 112***

2. Claims 7/1, 8/6/4/3/2/1, 10/8/6/4/3/2/1, 12/10/8/6/4/3/2/1, 15 12/10/8/6/4/3/2/1, 16/12/10/8/6/4/3/2/1, 18/12/10/8/6/4/3/2/1, 20/18/12/10/8/6/4/3/2/1 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claims thereby making the scope of the claims unclear. The preamble of claims 1, 6, 7 and 8 clearly set forth the claimed invention as the tamper indicating closure. The body of claims 7/1, 8/6/4/3/2/1 introduces and positively sets forth the projection structure of the container. The applicant is required to clarify what the claims are intended to be drawn to, i.e., either the closure alone or the combination of the closure and the container. The applicant is also required to make the language of the claims consistent with his intent. For the purpose of examination, the claims are considered to be drawn to the closure.

Depending claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 3727

4. Claims 1,25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Molinaro et al. (US 5,480,045).

***Claim Rejections - 35 USC § 103***

5. Claims 11/1, 11/25, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Molinaro in view of Montgomery (US 5,379,910). Molinaro discloses the claimed closure except for the annular bead extending from the closure skirt for engaging a sealing groove or a sealing bead on the exterior container neck. Figure 13 of Montgomery discloses a closure comprising an annular bead (74) extending from the closure skirt for contacting at least a portion of the exterior container neck finish. It would have been obvious to one of ordinary skill in the art to modify the closure of Molinaro in view of Montgomery to provide an annular bead extending from the closure skirt for contacting at least a portion of the exterior of the container neck finish, including a sealing groove or a sealing bead, as an additional seal between the closure and the container.

6. Claims 1-6,21,22,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kern (US 4,448,319) in view of Sander et al. (5,487,481)(Sander). Kern discloses a(n initially) snap-on, twist-off closure comprising a top portion, an annular depending skirt having an internal thread configuration, and an annular sealing flange depending from the top portion, but does not teach a tamper indicating ring. Sander discloses a closure comprising a tamper indicating ring comprising at least one elevated area and a plurality of frangible elements, wherein at least one of the frangible elements is connected to said skirt from an elevated area. It would have been obvious to one of ordinary skill in the art to modify the closure of Kern in view of Sander to provide a tamper indicating ring for ensuring the integrity of the container contents prior to use by the ultimate consumer. It is noted that the preamble of claim 1 is directed to the closure only.

Art Unit: 3727

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 or 25 above, and further in view of Csaszar. Csaszar discloses the claimed closure (or container assembly) except for the sealing bead on the annular sealing flange. Figure 6 of Csaszar discloses an annular sealing flange comprising an annular sealing bead for ensuring firm contact between the closure bead and the interior surface of the container neck (column 8, lines 3-6). It would have been obvious to one of ordinary skill in the art to further modify the closure (or container assembly) of Kern in view of Csaszar to provide an annular sealing flange comprising an annular sealing bead for sealing engagement with the internal surface of the container neck for the reasons as taught by Csaszar.

8. Claims 11/1, 11/25, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1, 11/1, 11/25, and further in view of Montgomery. Kern as modified by Sander discloses the claimed closure except for the annular bead extending from the closure skirt for engaging a sealing groove or a sealing bead on the exterior container neck. Figure 5 of Montgomery discloses a closure comprising an annular bead (40) extending from the closure skirt for contacting at least a portion of the exterior container neck finish to engage a sealing bead (30) or a groove (above bead 30) on the container neck. It would have been obvious to one of ordinary skill in the art to further modify the closure of Kern in view of Montgomery to provide an annular bead extending from the closure skirt for contacting at least a portion of the exterior of the container neck finish, including a sealing groove or a sealing bead, as an additional seal between the closure and the container.

9. Claims 17, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 or 25 above, and further in view of Repp et al. (hereinafter Repp). The prior art discloses the claimed closure except for the number of thread leads and the thread leads being segmented. Repp discloses a container assembly comprising at least seven thread leads and that the threads can be segmented (col. 4,

Art Unit: 3727

lines 43-46). It would have been obvious to one having ordinary skill in the art at the time the invention was made to further provide the closure of Kern with eight or nine thread leads, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980) and to make the threads segmented as an obvious variation of thread arrangement.

10. Claims 1,21,23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kern in view of Julian (US 5,056,675). Kern discloses a(n initially) snap-on, twist-off closure comprising a top portion, an annular depending skirt having an internal thread configuration, an annular valve depending from the top portion, but does not teach a tamper indicating ring. Julian discloses a closure comprising a tamper indicating ring (30) connected to the skirt by at least one frangible element (34), said tamper indicating ring comprising at least one arcuate projection (52) and at least one nonremovable member breakably attached to the tamper indicating ring which cooperates with at least one said arcuate projection to assist in breaking said tamper indicating ring. It would have been obvious to one of ordinary skill in the art to modify the closure of Kern in view of Julian to provide a tamper indicating ring for ensuring the integrity of the container contents prior to use by the ultimate consumer. It is noted that the preamble of claim 1 is directed to the closure only.

***Allowable Subject Matter***

11. Claims 7/1, 8/6/4/3/2/1, 10/8/6/4/3/2/1, 12/10/8/6/4/3/2/1, 15 12/10/8/6/4/3/2/1, 16/12/10/8/6/4/3/2/1, 18/12/10/8/6/4/3/2/1, 20/18/12/10/8/6/4/3/2/1 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

12. Claim 7/25, 8/6/4/3/2/25, 10/8/6/4/3/2/25, 12/10/8/6/4/3/2/25, 15 12/10/8/6/4/3/2/25, 16/12/10/8/6/4/3/2/25, 18/12/10/8/6/4/3/2/25, 20/18/12/10/8/6/4/3/2/25 is objected to as being dependent

Art Unit: 3727

upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

13. Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art references are cited of interest.

15. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703)305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. (Eastern time).

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Ebony Smith at (703)305-3570.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148. The fax phone number for this Group is (703) 305-3579.

Robin A. Hylton/rah  
March 22, 2000



**Stephen K. Cronin**  
**Primary Examiner**